

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

FRIDAY, THE 19TH JANUARY 2007 / 29TH PAUSHA 1928

OP.No. 5338 of 1994(I)

PETITIONER:

- *1. V.K. BALASUBRAMANIAM, (DIED)
S/O. V.K. RAMAGUPTAN,
KADAMPAZHIPURAM VILLAGE,
OTTAPPALAM TALUK, PALGHAT DIST.**
- *2. BHARGAVI BALAN, W/O. LATE BALASUBRAMANIAM,
VADAKKEKARA HOUSE, PULLUNDASSERY,
KATTAMPAZHIPURAM VILLAGE, OTTAPPALAM TALUK,
PALAKKAD DIST.**
- 3. PRADEEP BALAN, S/O. LATE BALASUBRAMANNIAN,
-DO-**
- 4. PRAVEEN BALAN, S/O. LATE BALASUBRAMANNIAN,
-DO-**
- 5. PREMLA BIJU, D/O. LATE BALASUBRAMANNIAN,
-DO-**
- * ADDL. PETITIONERS ARE IMPEADED AS PER ORDER
DATED 16/11/2004 IN IA NO. 14258/2004.**

BY ADV. SRI.R.RAMADAS

RESPONDENTS:

- 1. STATE OF KERALA, REP. BY CHIEF SECRETARY TO GOVT.,
SECRETARIAT, TRIVANDRUM.**
- 2. THE SECRETARY TO THE GOVT., DEPARTMENT OF FOREST, TRIVANDRUM.**

OP NO. 5338/1994 I

3. THE CUSTODIAN OF VESTED FORESTS, KOZHIKODE.
4. THE DIVISIONAL FOREST OFFICER, PALGHAT.

BY SPL. GOVERNMENT PLEADER SRI. C.M. SURESH BABU (FOREST)

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 19/01/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

ORDER ON CMP NO. 9642/1994 IN OP NO. 5338/1994 I.

DISMISSED

19/01/2007.

SD/- K.BALAKRISHNAN NAIR, JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1. COPY OF THE COMMON ORDER IN OA NOS. 442/75 AND 812/75 ON THE FILE OF THE FOREST TRIBUNAL, PALGHAT DATED 18/3/78.

EXT.P2. COPY OF THE JUDGMENT IN MFA NO. 374/78 DT. 26/9/84.

EXT.P3. COPY OF THE JUDGMENT IN OP NO. 15103/93 DT. 3/12/93.

EXT.P4. COPY OF THE CERTIFICATE ISSUED BY R4 IN FAVOUR OF THE PETITIONER DT. 4/3/94.

RESPONDENT'S EXHIBITS:

EXT.R3A. COPY OF THE GO MS NO. 85/99/F&WLD DT. 28/09/99.

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K.BALAKRISHNAN NAIR, J.

O.P. NO. 5338 OF 1994-I

JUDGMENT

The petitioner has approached this Court, challenging a notification issued under Section 5 of the Kerala Preservation of Trees Act, 1986, mentioned in Ext.P4. During the pendency of the O.P., the petitioner died. Now, his legal heirs, who are impleaded as additional petitioners, are pursuing the matter. The Forest Tribunal by common order dated 18.3.1978, declared that 4.42 acres of land in Sy.Nos.211 and 210/4 of Kadampazhipuram village in Ottappalam Taluk did not vest in the Government. The said decision was affirmed in Ext.P2 judgment of this Court. Later, this Court by Ext.P3 judgment dated 3.12.1993, directed to hand over possession of the property to the petitioners therein within two months from the date of receipt of the copy of the judgment. While handing over the property in obedience to the said judgment, a notification under Section 5 of the Kerala Preservation of Trees Act, 1986, concerning the petitioner's property was issued. Hence this O.P challenging the said notification.

2. The point raised by the petitioner is covered in his favour by the

decision of the Division Bench of this Court in O.P.No.3252/2003. Accordingly, the Original Petition is allowed. The notification issued under the Preservation of Trees Act, concerning the property of the petitioner, is quashed.

19th January, 2007.

K.BALAKRISHNAN NAIR, JUDGE.

Nm/

K.BALAKRISHNAN NAIR,J.

O.P. NO.5338/1994-I

JUDGMENT

19.1.2007